Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review—	)	CC Docket No. 98-137
Review of Depreciation Requirements for	)	
Incumbent Local Exchange Carriers	)	
	)	
United States Telephone Association	)	ASD 98-91
Petition for Forbearance From	)	
Depreciation Regulation of Price Cap	)	
Local Exchange Carriers	)	

REPLY COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

Cincinnati Bell Telephone Company ("CBT"), an independent, mid-size local exchange carrier, submits these Reply Comments in response to comments filed in the above-referenced proceeding.

I. INTRODUCTION

The majority of commenters in this proceeding urge the Commission to forbear from regulating ILEC depreciation rates as requested in the United States Telephone Association's ("USTA") Petition. However, several parties, particularly AT&T and MCI WorldCom, oppose such forbearance and, in fact, contend that strict Commission oversight of ILEC depreciation is necessary in order to ensure that ILEC rates are just and reasonable. These parties' arguments in favor of retaining Commission prescription of depreciation are motivated more by their desire to keep ILECs at a competitive disadvantage, than they are supported by any concrete evidence that eliminating such regulation will result in rates that are not just and reasonable. Many of the positions

advocated by these parties appear designed primarily to keep unnecessary burdens on the ILECs (e.g., continuing to require mid-size LECs to file theoretical reserve studies).

As CBT stressed in its comments, unless a cost benefit analysis demonstrates that the benefits of regulating depreciation rates outweigh the costs, the regulations should be eliminated. Those parties opposing forbearance of depreciation regulation have not performed such an analysis. Instead, they base their cases on speculation about what they contend might happen. Even their arguments supporting this speculation, however, are flawed as evidenced by comments of other parties.

II. UNDER PRICE CAPS, ILEC COSTS AND EARNINGS ARE IRRELEVANT

AT&T, MCI WorldCom, Ad Hoc and the General Services Administration argue that the cost price linkages cited in the NPRM[1] are valid reasons to maintain regulation of depreciation rates. None offer any substantive support for their arguments. What little justification they offer is countered by the comments of many of the other parties to this proceeding.[2] In particular, CBT refers the Commission to the Affidavit of William E. Taylor, Ph.D. and Aniruddha Banerjee, Ph.D. accompanying USTA's Comments for a thorough analysis of why the cost price linkages cited in the NPRM are irrelevant and why depreciation regulation is unnecessary.

Rather than providing any type of cost-benefit analysis to support their calls for retention of depreciation regulation, AT&T and MCI WorldCom, in almost identical language, claim that the Commission's regulations should be maintained because "premature deregulation of depreciation would allow LECs to charge excessive depreciation which would lower their earnings and mask the need for a higher

[1] NPRM at para. 6.

productivity factor."[3] CBT urges the Commission to ignore this self-serving argument. First, this is not the docket in which to argue for a higher X-factor. The appropriateness of the current X-factor is being considered in CC Docket No. 94-1.[4] Second, as was clearly demonstrated in the replies filed in response to the recent Public Notice in CC Docket 94-1, ILEC earnings are irrelevant in a price cap system and clearly do not justify a higher X-factor.[5] Thus, AT&T and MCI WorldCom's claim in this regard is without merit.

III. MID-SIZE LEC RELIEF IS WARRANTED

Ad Hoc, AT&T and MCI WorldCom all oppose the Commission's proposal to grant relief to mid-size LECs. These parties ignore the Commission's point that mid-size LECs represent a small part of the total industry and the proposed relief would not hamper the Commission's ability to monitor the depreciation prescription process. As CBT indicated in its comments, even the Commission's proposal to eliminate the theoretical reserve study for mid-size LECs does not go far enough. Instead, the Commission should consider total elimination of depreciation regulation for mid-size LECs. Thereafter, if questions regarding the propriety of their depreciation rates arise, the Commission has the ability to request that the LEC justify the reasonableness of its rates. While CBT believes that the depreciation prescription process should be eliminated for all ILECs, there is no reason to continue to burden the mid-size LECs with

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[2] *See*, for example, the comments of Ameritech, BellSouth, SBC and USTA.
[3] AT&T Comments at page 18. Also see MCI WorldCom Comments at page 5.
[4] See comments and replies filed on October 26, 1998 and November 9, 1998 respectively in response to the Commission's Public Notice (released October 5, 1998) in CC Docket No. 96-262, CC Docket No. 94-1, and RM-9210.
[5] *See,* for example, USTA Reply Comments at pp. 15-20 and accompanying Statement of Larry F. Darby filed November 9, 1998 and Reply Comments of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell at pp. 28-32 filed November 9, 1998.

the depreciation prescription process. Relieving mid-size companies at this time is a reasonable step that could serve as a model for further relief of the larger companies.

AT&T argues that the intent of the amendment to section 220(b) of the 1996 Act was "to recognize that the Commission needs to focus its attention on the larger ILECs…"[6] While CBT does not necessarily agree with AT&T's interpretation of Congress' intent, if this was Congress' intent, then surely Congress intended that the Commission not regulate the depreciation practices of mid-size ILECs. Congress clearly did not consider ILECs with less than 2 percent of the nation's access lines to be large. Indeed, it specifically distinguished such carriers from the larger carriers in section 251(f)(2) of the Act. If Congress acknowledged mid-size carriers as distinct from large carriers in section 251, CBT submits that it would be illogical to conclude that these same mid-size carriers should be considered large for other purposes. Thus, under AT&T's interpretation of the Act, mid-size ILECs are prime candidates for forbearance from the Commission's depreciation prescription process. Therefore, if the Commission concludes that it must continue to prescribe depreciation rates for the large ILECs (in spite of the strong case for elimination of depreciation regulation for all price cap LECs), the prescription process should clearly be eliminated for mid-size ILECs such as CBT.

IV. CURRENT EXPENSE TREATMENT OF SALVAGE AND COST OF REMOVAL SHOULD NOT BE MANDATORY

In their comments, CBT and other LECs opposed the Commission's proposal to eliminate the future net salvage factor from the depreciation formula and to record salvage and cost of removal as a current expense in the period incurred.[7] As these parties

[6] AT&T at p. 15.

[7] See, Ameritech at pp. 12-13, BellSouth at pp. 12-14, CBT at pp. 8-9,GTE at pp. 18-19, and SBC at pp. 27-28. Some of these parties recommend that the Commission defer any action on this issue until after the

explain, the Financial Accounting Standards Board ("FASB") is currently reviewing the accounting treatment for the cost of removal. As GTE explains, the Commission's proposal and the FASB recommendation contradict one another and if both rulings are adopted, "separate record keeping would be required for the same accounting event."[8] This would result in increased costs for carriers and, contrary to the Commission's tentative conclusion, would not "reduce the regulatory burden of the depreciation prescription process."[9] Thus, CBT urges the Commission to defer action on this matter until after the FASB finalizes its decision, or in the alternative, to make any such change optional for the carriers.

V. CONCLUSION

CBT urges the Commission to reject the recommendations of those parties that call for continued prescription of ILEC depreciation rates until "robust" competition develops. As Drs. Taylor and Banerjee discuss in their affidavit, "the degree of competition in local exchange markets is not pivotal for the decision at issue here. The pricing discipline that 'robustly' competitive markets may be relied upon to impose on ILECs is already being exerted by price cap regulation."[10] The cost price linkages cited in the NPRM and recited by several parties are irrelevant or can be addressed by alternative means. To rely on those factors to justify retention of the depreciation process is contrary to the pro-competitive, deregulatory goals of the 1996 Act. As Commissioner Furchgott-Roth has stated, "(i)n today's increasingly competitive environment, there

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Financial Accounting Standards Board has finalized its standards on the treatment of costs of removal, while others recommend that if the Commission does anything in this area, it be optional for carriers. All of these parties, however, oppose a mandatory change at this time.

[8] GTE at p. 19. Also see BellSouth at p. 14.

[9] NPRM at para. 15.

[10] Taylor and Banerjee Affidavit at p. 9 accompanying USTA comments.

should be no need for the Commission to continue to dictate, even through revised streamlined procedures, depreciation rates or the factors that may be used to compute such rates."[11] The Commission should expeditiously forbear from depreciation regulation for all price cap ILECs as requested in the USTA petition, or, at a minimum, exempt the mid-size ILECs from the depreciation prescription process.

Respectfully submitted,

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[11] See, Separate Statement of Commissioner Harold Furchtgott-Roth accompanying *Cincinnati Bell Telephone Company, Southwestern Bell Telephone Company, and U S West Communications, Inc., Prescription of Revised Depreciation Rates, Memorandum Opinion and Order*, FCC 98-11, released January 30, 1998.